IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
FIRST APPEAL NO.2102 OF 2006
Along with
Civil Application No.3752 OF 2006

Mrs Gracy Victor D'Silva
and anr. .. Appellants.
Vs
Mr Shekhar Palani Devendra, .. Respondent.

Ms Swati C Narvekar and Ms Kavita C.Narvekar, for the appellants.
Mr P.S.Gidwani, for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 20.11.2006

PC:

1. Heard the learned counsel for the parties.

2. This appeal is directed against the judgment and order dated 6.7.2006 rendered in Special Civil Suit No.5079 of 2001, by which the suit instituted by the respondent-plaintiff has been decreed and the mandatory injunction against the appellants/defendants has also been granted. The suit was filed for injunction restraining the appellant from disturbing the respondent's possession and for mandatory injunction seeking appellant's removal from the suit premises. The plaintiff claims to be the son of one Pathan Palani and his first wife Parvati, while the appellants-defendants claim to be the brother and sister of one Christian Jessi Palani, the second wife of Pathan Palani. Admittedly, Pathan Palani and Christian Jessi Palani and their children are no more. Ms.Narvekar, learned counsel for the appellants, vehemently submitted that the respondent-plaintiff has miserably failed to prove

his status as son of Pathan Palani and his first wife Parvati and, therefore, he has no right whatsoever in the suit premises. The appellants-defendants claim right in the suit premises on the basis of the affidavit executed before the Special Metropolitan Magistrate by which Christian Jessi Palani allegedly transferred the suit premises in their favour. The court below has rightly rejected the contention holding that the title of the property cannot be transferred by way of an affidavit and, secondly, there is absolutely nothing on record to indicate that the suit property was, in fact, transferred in favour of the appellants. The discussion to that effect appears in paragraphs 9 and 10 of the impugned judgment. I perused the pleadings, notes of evidence and the relevant documents relied upon by the parties. Insofar as the status of the respondent-plaintiff as son of Palani and Parvati is concerned, the plaintiff has produced on record several documents which are referred to and discussed by the court below in paragraph 19 of the judgment. Those documents clearly demonstrate that the respondent-plaintiff is the son of Palani and Parvati. Besides the oral evidence of the plaintiff himself, his witness P.W 3, cousin of Pathan Palani, has also corroborated the statement of the plaintiff that Palani

had married to Parvati in 1964 and the plaintiff was born in 1965. I have perused the pleadings and the evidence. The plaintiff in the plaint has clearly demonstrated his relation with Pathan Palani. As against this, in the written statement his relation with Pathan Palani as the son has not been challenged at all. Even from the evidence and in particular the deposition of defendant no.1, it appears that the status of the plaintiff as the son of Pathan Palani and Parvati has not been challenged. In paragraph 10 of the examination-in-chief, defendant no.1 has, on the contrary, stated that she does not know whether the plaintiff is the son of Palani and she cannot recognise that the plaintiff is the same boy "Shekhar", who once lived with Pathan Palani and left his house some time in 1990. The documents, such as school leaving certificate, notice, ration card, passport, etc, which are referred to in paragraph 19 of the impugned judgment, further support the case of the plaintiff that he is the son of Pathan Palani. Keeping that in view and considering that the findings of fact recorded by the courts below are based on sound reasons, in my opinion, the impugned judgment does not deserve interference by this court. In the circumstances, the first appeal is dismissed. As a consequence thereof, the civil application also stands dismissed.

(D.B.BHOSALE,J.)